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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,593	11/10/2003	Jack Tucker		6242

7590 11/17/2004  
David A. Tucker  
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EXAMINER

BUMGARNER, MELBA N

ART UNIT PAPER NUMBER

3732

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/705,593

Applicant(s)

TUCKER ET AL.

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The serial number of the parent application noted by the applicant is incorrect, the number should be --10/228,740— not 10/288,740. An application cannot be both divisional and continuation-in-part. As noted from the new matter in the specification of this application number 10/705,593, the application will be considered as continuation-in-part. The subject matter not disclosed in the original disclosure will not be afforded the priority date of the parent application of November 6, 2002, but that of the filing date of this application.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a tube affixed to the frame or a channel within the frame" in claim 5, "the tube or channel contains internal mixing baffles" in claim 6, "a means for affixing the frame to an implant transfer post" in claim 15, and "the buccal

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wall is affixed to the implant transfer post by a support member” in claim 16 must be shown or the feature(s) canceled from the claim(s). **No new matter** should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Claim Objections*

4. Claim 16 is objected to because of the following informalities: recitation of “the buccal wall” lacks sufficient antecedent basis. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 14, it is unclear whether the object further comprises thermosetting plastic or referring to the plastic of the immobilizing agent. In claim 16, it is unclear whether the support member is a part of the tray or separate element.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 8, 12, 13, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Liddle (2003/0224319). Liddle discloses a tray 10 for taking a dental impression comprising a frame having a generally U-shaped portion (page 2 [0017], page 3 [0037], the bottom part of the portion comprises a posterior bar, a membrane 14 supported on and integral with the frame and spanning the portion, a means for imparting a rigidity to the tray comprising an object 22 engaged with the frame in the tray's posterior region. As to claim 2, the object comprises an immobilizing agent other than the impression material. As to claim 3, the immobilizing agent would impede the frame's alteration of shape. Patentable weight is not given to the process by which the tray is made, because a product claim is properly met if the final product is shown regardless of the process used. Liddle shows the immobilizing agent comprising a thermoplastic material (page 1 [0011]).

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9. Claims 1-4, 8, 12, 13, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Pelerin (6,450,808). Pelerin discloses a tray 10 for taking a dental impression comprising a frame 22 having a generally U-shaped portion, the bottom part of the portion comprises a posterior bar, a membrane 17 supported on and integral with the frame and spanning the portion, a means for imparting a rigidity to the tray comprising an object 40 engaged with the frame in the tray's posterior region. As to claim 2, an object comprises an immobilizing agent 16 other than the impression material. As to claim 3, the immobilizing agent would impede the frame's alteration of shape. Patentable weight is not given to the process by which the tray is made, because a product claim is properly met if the final product is shown regardless of the process used. As to claim 4, the frame comprises a joint 60. Pelerin shows the immobilizing agent comprising a thermoplastic material (column 2 line 15).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 5 and 6 are rejected as understood, under 35 U.S.C. 103(a) as being unpatentable over Liddle in view of Trichas (6,641,393). Liddle discloses a dental tray that shows the limitations as described above; however, Liddle does not show the frame comprising a tube affixed to the frame. Trichas teaches a dental tray comprising a tube 200 affixed to the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tray of Liddle to include the tube of Trichas in order to have a tray with a

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material delivery system in view of Trichas. Trichas shows the tube containing internal mixing baffles 210.

12. Claims 5 and 6 are rejected as understood, under 35 U.S.C. 103(a) as being unpatentable over Pelerin in view of Trichas. Pelerin discloses a dental tray that shows the limitations as described above; however, Pelerin does not show the frame comprising a tube affixed to the frame. Trichas teaches a dental tray comprising a tube 200 affixed to the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tray of Pelerin to include the tube of Trichas in order to have a tray with a material delivery system in view of Trichas. Trichas shows the tube containing internal mixing baffles 210.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liddle in view of Hare (5,316,473). Liddle discloses a dental tray that shows the limitations as described above; however, Liddle does not show the frame comprising a fiber optic glass. Hare teaches a dental tray having a frame comprising a fiber optic glass (column 5 line 25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tray of Liddle to include the material of Hare in order to be able to direct light through the tray to cure light polymerizable material in view of Hare.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pelerin in view of Hare. Pelerin discloses a dental tray that shows the limitations as described above; however, Pelerin does not show the frame comprising a fiber optic glass. Hare teaches a dental tray having a frame comprising a fiber optic glass (column 5 line 25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the tray of Pelerin to

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include the material of Hare in order to be able to direct light through the tray to cure light polymerizable material in view of Hare.

15. Claims 9-11, 14-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liddle. Liddle discloses a dental tray that shows the limitations as described above; however, Liddle does not show the immobilizing agent comprising adhesive. It would have been an obvious matter of choice to one of ordinary skill in the art at the time the invention was made as to the specific immobilizing agent being other than a thermoplastic material in that the specification states that any adhesive or other material that undergoes transition from a deformable state to a rigid state could be used. It would have been an obvious matter of choice as to the means for affixing the frame to an implant transfer post, in it is not adequately described in the specification nor shown in the drawings. It would have been an obvious matter of choice as to the specific color of the frame, in that it is dependent upon the wavelengths of the curing light.

16. Claims 9-11, 14-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pelerin. Pelerin discloses a dental tray that shows the limitations as described above; however, Pelerin does not show the immobilizing agent comprising adhesive. It would have been an obvious matter of choice to one of ordinary skill in the art at the time the invention was made as to the specific immobilizing agent being other than a thermoplastic material in that the specification states that any adhesive or other material that undergoes transition from a deformable state to a rigid state could be used. It would have been an obvious matter of choice as to the means for affixing the frame to an implant transfer post, in it is not adequately described in the specification nor shown in the drawings. It would have been an obvious matter of choice



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as to the specific color of the frame, in that it is dependent upon the wavelengths of the curing light.

*Conclusion*

17. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

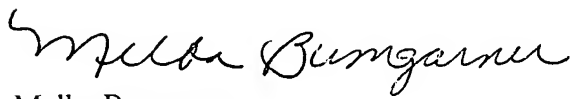
Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

18. Any inquiry concerning this communication from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Melba Bumgarner".

Melba Bumgarner  
Patent Examiner